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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEW MEXICO
9

10 ERNESTO PABLO LORENZO,)

11 *Petitioner,*)

12 v.)

13)
14 DORA CASTRO, in her official capacity)
15 as Warden of Otero County Processing)
16 Center;)

17 MARY DE ANDA-YBARRA, in her)
18 official capacity as Field Office Director)
19 of the ICE ERO;)

20 KRISTI NOEM, in her official capacity as)
21 Secretary of the U.S. DHS; and)

22 PAM BONDI, in her official capacity as)
23 Attorney General of the United States,)

24 *Respondents.*)

Case No. **2:25-cv-00923-KWR-GJF**

**REPLY TO RESPONSE TO
PETITION FOR WRIT
OF HABEAS CORPUS**

Honorable Kea W. Riggs
United States District Judge

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1 **I. INTRODUCTION**

2 Petitioner Ernesto Pablo Lorenzo (“Petitioner”) respectfully submits this Reply
3 in response to the Respondent’s Answer filed on November 14, 2025. As the Court’s
4 Order provided no schedule for further briefing, Petitioner files this reply at the
5 earliest opportunity.

6 This Reply addresses each of Respondents’ asserted defenses and demonstrates
7 that Petitioner’s ongoing confinement is unlawful under both the Immigration and
8 Nationality Act (“INA”) and the U.S. Constitution.

9 **II. PETITIONER HAS FULLY EXHAUSTED ALL AVAILABLE**
10 **ADMINISTRATIVE REMEDIES**

11 Petitioner’s continued detention cannot be denied on exhaustion grounds because
12 no meaningful administrative remedies are available to him, and any further steps
13 would be futile. As a noncitizen detained under 8 U.S.C. § 1231(a)(6), he has no
14 access to bond jurisdiction before an Immigration Judge, leaving him with no custody
15 redetermination mechanism to exhaust. The Government’s reliance on HQPDU
16 review is equally misplaced because ICE never conducted the mandatory 90-day post-
17 order custody review required under 8 C.F.R. § 241.4. Under 8 C.F.R. § 241.4 a 90-
18 day post-order review must be initiated by the agency on its own and that serves as a
19 prerequisite to HQPDU consideration. Without that foundational 90-day
20 determination, Petitioner cannot access HQPDU review, and ICE cannot shift to him
21 the burden of triggering a process that regulations expressly place on the agency.

22 Moreover, even if HQPDU review were available, it would not provide Petitioner
23 the relief he seeks. HQPDU cannot order release under the standards set forth in
24 *Zadvydas v. Davis*, and offers no administrative appeal from its determinations. A
25 process that is structurally limited, unappealable, and incapable of addressing the core
26 statutory and constitutional issues raised in this habeas action cannot serve as an
27 adequate or required remedy. Because ICE failed to provide the mandatory custody
28 review and because HQPDU cannot offer the relief sought, any further exhaustion is

1 both impossible and futile, and the Court should proceed to the merits of Petitioner’s
2 claim.

3 **III. PETITIONER HAS MET HIS BURDEN UNDER ZADVYDAS, AND**
4 **RESPONDENTS OFFER ONLY SPECULATION, NOT EVIDENCE, OF**
5 **ANY REALISTIC REMOVAL**

6 Under *Zadvydas* and 8 U.S.C. § 1231(a)(6), DHS may not detain a noncitizen
7 indefinitely after the removal period. Detention is limited to the time “reasonably
8 necessary” to effect removal, and once detention approaches or exceeds six months,
9 the burden shifts: the noncitizen must provide “good reason to believe that there is no
10 significant likelihood of removal in the reasonably foreseeable future,” at which point
11 the Government must respond with evidence sufficient to rebut that showing. 533 U.S.
12 at 699–701. Here, Petitioner easily satisfies this standard.

13 **A. Withholding of Removal to Guatemala Creates a Legal Barrier to His**
14 **Removal There**

15 The Government concedes that in 2017 an Immigration Judge granted Petitioner
16 withholding of removal to Guatemala and ordered that he be removed “to any country
17 other than Guatemala.” That grant, codified in 8 U.S.C. § 1231(b)(3)(A) and
18 implemented in 8 C.F.R. §§ 208.16–208.22, categorically prohibits removal to
19 Guatemala unless the withholding order is terminated. DHS has not argued, much less
20 shown, that withholding has been terminated. Therefore, Guatemala is not a legally
21 permissible destination for removal under the current withholding order.

22 **B. DHS Has Already Failed Once to Remove Him to Mexico and Has Not**
23 **Shown Any Country Will Accept Him**

24 Respondents’ own chronology shows that DHS has tried and failed to remove
25 Petitioner to Mexico and has no other concrete option:

26 On June 12, 2025, ICE issued a Notice of Third Country Removal to Mexico. On
27 August 20, 2025, ICE requested Mexico’s acceptance under a CVNH program and
28 Petitioner expressed fear. On August 25, 2025, he was referred for a credible fear

1 interview regarding Mexico. USCIS made two negative credible fear determinations
2 regarding removal to Mexico, in September and October 2025. On September 24,
3 2025, ICE attempted to remove him to Mexico, but the removal did not occur.

4 As of the Government's filing, ICE merely states that it "continues to pursue third
5 country removal," without identifying any country that has agreed to accept him. After
6 months of detention, DHS can only point to one failed removal attempt and no current
7 acceptance by Mexico or any other country. That is not evidence of a "significant
8 likelihood" of removal in the reasonably foreseeable future, which places this case
9 squarely within what *Zadvydas* prohibits.

10 DHS has not designated a lawful country of removal under 8 U.S.C. § 1231(b)(2),
11 nor has it complied with the mandatory procedural safeguards governing third-country
12 removal. DHS has not provided Petitioner with notice of intent to remove him to a
13 third country, an opportunity to contest such removal on protection grounds, or any
14 credible diplomatic assurances that removal to the proposed country would not result
15 in persecution or torture. Instead, the record reflects a pattern of rushed and
16 procedurally deficient credible fear proceedings. On multiple occasions, Petitioner and
17 his counsel, Alfonso Morales, were given only moments' notice of scheduled credible
18 fear interviews, including a same-day demand on September 12, 2025, and a second
19 abrupt notification on September 17, 2025. Despite counsel's prior commitments and
20 explicit requests for reasonable rescheduling, the interviews proceeded without
21 adequate notice, and one was conducted entirely without counsel present. These
22 failures demonstrate DHS's disregard for the safeguards required before executing a
23 third-country removal and underscore that DHS has not identified or lawfully
24 designated any country willing and able to accept Petitioner. Given the absence of a
25 designated receiving country and the government's failure to comply with even the
26 basic procedural steps necessary to effectuate a lawful removal, there is no significant
27 likelihood that Petitioner's removal will occur in the reasonably foreseeable future, as
28 required under *Zadvydas*

1 **C. The Length and Nature of His Detention Confirm That Removal Is Not**
2 **Reasonably Foreseeable**

3 Petitioner has been detained since June 10, 2025, under a withholding order that is
4 already years old.

5 The country of persecution, Guatemala, remains unavailable as a destination
6 because of withholding; The only identified third country, Mexico, has not actually
7 received him, despite an attempted removal. Respondents identify no concrete
8 timeline. This is more than enough to constitute “good reason” to doubt that removal
9 will occur in the reasonably foreseeable future. Respondents’ assertion that Petitioner
10 “was previously on the cusp of being removed” and that nothing “suggests” that
11 removal is not reasonably foreseeable amounts to pure speculation. It does not satisfy
12 their obligation under *Zadvydas*.

13 In the absence of a viable receiving country and in light of his detention of over 5
14 months under an old order that already includes withholding, further confinement is
15 no longer “reasonably necessary to bring about [his] removal.” 533 U.S. at 689. It has
16 become the indefinite detention *Zadvydas* forbids.

17 **IV. PETITIONER’S ARREST AND CONTINUED DETENTION RAISE**
18 **CONSTITUTIONAL CONCERNS**

19 The circumstances of Petitioner’s arrest and confinement reinforce the conclusion
20 that his continued detention is unlawful.

21 Respondents admit that months after Petitioner’s June 10, 2025, arrest, “the
22 arresting agency has thusfar been unable to produce records regarding the arrest,”
23 despite regulatory requirements that “adequate records” be maintained. At the same
24 time, they attempt to justify the seizure based on his presence in a Home Depot
25 parking lot with “a group of other Latino men” waiting for work. That rationale rests
26 on generalized assumptions about day laborers in Los Angeles, not individualized
27 facts about Petitioner, and falls far short of the reasonable suspicion or probable cause
28 standard they themselves invoke. Under Fourth Amendment principles, “ethnicity

1 alone cannot furnish reasonable suspicion” *Concurring opinion Noem v. Vasquez*
2 *Perdomo*, 2025 WL 2585637, at *3 (U.S. Sept. 8, 2025), nor can the mere fact that a
3 person stands among other Latino workers. Respondents identify no additional facts
4 that would have allowed officers to form an articulable basis for believing Petitioner
5 had violated any law.

6 Petitioner initial seizure lacked articulable facts connecting Petitioner to any
7 violation of immigration law which makes his arrest unlawful even under the civil
8 context. The ICE officers detained Petitioner absent any articulable basis for believing
9 he had violated immigration law. The seizure was based solely on appearance,
10 amounting to impermissible racial profiling. Such conduct violates the Fourth
11 Amendment. See *INS v. Delgado*, 466 U.S. 210, 217 n.5 (1984) (Fourth Amendment
12 applies to immigration enforcement). When the Government cannot produce
13 contemporaneous arrest documentation, relies on broad stereotypes rather than
14 specific facts, and uses such a seizure as the gateway to months of civil detention with
15 no realistic prospect of removal, the detention loses any legitimate regulatory
16 justification and violates the Due Process Clause.

17 **V. CONCLUSION**

18 For the reasons stated in the Petition and herein, Petitioner respectfully requests
19 that this Court grant the Writ and order his immediate release from custody or, in the
20 alternative, order respondents to provide Petitioner with an individualized bond
21 hearing to request release under reasonable conditions of supervision.

22
23 Dated: November 21, 2025

Respectfully submitted,

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25
26 /s/ Alfonso Morales

27 Alfonso Morales, Esq.

28 *Attorney for Ernesto Pablo Lorenzo*

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which constitutes service on all parties or counsel by electronic means as reflected on the Notice of Electronic Filing.

/s/Alfonso Morales

Alfonso Morales

Attorney for Ernesto Pablo Lorenzo

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